

SUPPLEMENT NO. 16 TO PART 760—
INTERPRETATION

SOURCE: 61 FR 12900, Mar. 25, 1996, unless
otherwise noted.

Pursuant to Articles 5, 7, and 26 of the Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan and implementing legislation enacted by Jordan, Jordan's participation in the Arab economic boycott of Israel was formally terminated on August 16, 1995.

On the basis of this action, it is the Department's position that certain requests for information, action or agreement from Jordan which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Hashemite Kingdom of Jordan ports has been considered a boycott-related request that the exporter could not comply with because Jordan has had a boycott in force against Israel. Such a request from Jordan after August 16, 1995 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Jordanian government officials to furnish the place of birth of employees the company is seeking to take to Jordan because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the regulations, irrespective of the country of origin. For example, requests containing references to "blacklisted companies", "Israel boycott list", "non-Israeli goods" or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

PART 762—RECORDKEEPING

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AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

§ 762.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Transactions subject to this part.* The recordkeeping provisions of this part apply to the following transactions:

(1) Transactions involving restrictive trade practices or boycotts described in part 760 of the EAR;

(2) Exports of commodities, software, or technology from the United States and any known reexports, transshipment, or diversions of items exported from the United States;

(3) Exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein, or that the item involved is to be reexported, transshipped, or diverted from Canada to another foreign country; or

(4) Any other transactions subject to the EAR, including, but not limited to, the prohibitions against servicing, forwarding and other actions for or on behalf of end-users of proliferation concern contained in §§ 734.2(b)(7) and 744.6 of the EAR. This part also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction that a reasonably prudent exporter would believe likely to lead to a violation of the EAA, the EAR or any order, license or authorization issued thereunder.

(b) *Persons subject to this part.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in paragraph (a) of this section, and any person in the United States or abroad who is required to make and maintain records under any provision of the EAR, shall keep and maintain all records described in § 762.2 of this part that are made or obtained by that

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person and shall produce them in a manner provided by § 762.6 of this part.

§ 762.2 Records to be retained.

(a) *Records required to be retained.* The records required to be retained under this part 762 include the following:

- (1) Export control documents, as defined in part 772 of the EAR;
- (2) Memoranda;
- (3) Notes;
- (4) Correspondence;
- (5) Contracts;
- (6) Invitations to bid;
- (7) Books of account;
- (8) Financial records;
- (9) Restrictive trade practice or boycott documents and reports, and
- (10) Other records pertaining to the types of transactions described in § 762.1(a) of this part, which are made or obtained by a person described in § 762.1(b) of this part.

(b) *Records retention references.* Paragraph (a) of this section describes records that are required to be retained. Other parts, sections, or supplements of the EAR which require the retention of records or contain recordkeeping provisions, include, but are not limited to the following:

- (1) Part 736, General Prohibitions;
- (2) § 732.6, Steps for other requirements;
- (3) § 740.1, Introduction (to License Exceptions);
- (4) § 742.12(a)(3), High Performance Computers;
- (5) Supplement No. 3 to part 742 High Performance Computers, Safeguards and Related Information;
- (6) § 742.15;
- (7) § 740.7, Humanitarian donations (NEED);
- (8) § 748.4(a), Disclosure and substantiation of facts on license applications;
- (9) § 748.6, General instructions for license applications;
- (10) § 748.9, Support documents for license applications;
- (11) § 748.10, Import and End-user Certificates;
- (12) § 748.11, Statement by Ultimate Consignee and Purchaser;
- (13) § 748.13, Delivery Verification (DV);
- (14) § 748.2(c), Obtaining forms; mailing addresses;

(15) § 750.7, Issuance of license and acknowledgment of conditions;

(16) § 750.8, Revocation or suspension of license;

(17) § 750.9, Duplicate licenses;

(18) § 750.10, Transfer of licenses for export;

(19) § 752.7, Direct shipment to customers;

(20) § 752.9, Action on SCL applications;

(21) § 752.10, Changes to the SCL;

(22) § 752.11, Internal Control Programs;

(23) § 752.12, Recordkeeping requirements;

(24) § 752.13, Inspection of records;

(25) § 752.14, System reviews;

(26) § 752.15, Export clearance;

(27) § 754.2(j)(3), Recordkeeping requirements for deep water ballast exchange.

(28) § 754.4, Unprocessed western red cedar;

(29) § 758.1(h), Record and proof of agent's authority;

(30) § 758.1 and § 758.2, Shipper's Export Declaration or Automated Export System record;

(31) § 758.6, Destination control statements;

(32) § 760.6, Restrictive Trade Practices and Boycotts;

(33) § 762.2, Records to be retained;

(34) § 764.2, Violations;

(35) § 764.5, Voluntary self-disclosure; and

(36) § 766.10, Subpoenas;

(37) § 743.1, Wassenaar reports;

(38) § 748.14, Exports of firearms;

(39) § 745.1, Annual reports;

(40) § 745.2, End-use certificates; and

(41) § 758.2(c), Assumption writing.

[61 FR 12900, Mar. 25, 1996, as amended at 61 FR 27258, May 31, 1996; 61 FR 65466, Dec. 13, 1996; 64 FR 17974, Apr. 13, 1999; 65 FR 14860, Mar. 20, 2000; 65 FR 42573, July 10, 2000]

§ 762.3 Records exempt from recordkeeping requirements.

(a) The following types of records have been determined to be exempt from the recordkeeping requirement procedures:

- (1) Export information page;
- (2) Special export file list;
- (3) Vessel log from freight forwarder;
- (4) Inspection certificate;
- (5) Warranty certificate;